

From: Thomas D. Helmholdt
To: Microsoft ATR
Date: 11/16/01 1:34pm
Subject: Microsoft Settlement Insufficient to Protect Consumers

November 16, 2001

Dear U.S. District Judge Colleen Kollar-Kotelly,

I am writing to express my belief that the provisions of the settlement agreement between the United States and Microsoft are insufficient to protect consumers. Although I am not an expert in the computer field, I am a consumer for personal purposes and for business purposes. I am dismayed that Microsoft will continue to be able to leverage its operating system to foist off on consumers additional "add-in" software. However, I am even more annoyed that Microsoft will be able to maintain its coercive contracts with computer manufacturers requiring them to pay for a Microsoft operating system for every computer they sell, even if the computer system does not include Microsoft's operating system software. Over the last few years, I have attempted to purchase computers without Microsoft's operating system or with alternative operating systems. In each case, I was told that I would still have to pay for the Microsoft operating system, even if I did not want it. What kind of competitive system is this? Do I have no choice at all? It is my understanding that the current agreements that are in place with computer manufacturers and distributors will not change this practice. To add insult to injury, I have recently been informed that Microsoft will no longer sell Windows 95, and/or Windows 98 operating systems. This creates a tremendous problem for system administrators in small and medium size business who have previously been forced to standardize on these systems. Even though I am an intellectual property law attorney, I am at a loss to understand why a company like Microsoft should be able to maintain its copyright in computer software that has been misused for anti-trust purposes. By analogy, under patent laws, the patent can be held invalid and/or unenforceable, and the subject matter covered by the patent is dedicated to the public for its free use from that point forward. It would seem an effective strategy to signal to all future software businesses that if they misuse their copyrights that the rights contained therein will be forfeited. The entire source code of all software that Microsoft has used in violation of the anti-trust laws should be stripped of any copyright protections and competitors should be free to reverse engineer, copy, distribute and sell it without any interference from Microsoft. It seems illogical to allow Microsoft to maintain a legal right in the copyright of software that has been placed in its hands by the government. If it is a right granted by the government, it would be appropriate to remove the protections of that right when it is misused. This would truly foster competition, it would allow competing operating systems to be quickly developed and sold that are compatible with

Windows 95 and Windows 98 operating systems. Then the consumer will have a real choice of purchasing the new Microsoft operating system or purchasing a competitor's clone of the old misused operating systems. These are my thoughts on the matter, and I hope you will find them helpful.

Sincerely,

Thomas D. Helmholtz